IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

The State of Rajasthan vs. Ramdev & Ors.

D.B.Cri. Appeal No.200/1988

Under Section 378 (iii) & (i) Cr.P.C. against the judgment dated 14.12.87 passed by the Sessions Judge, Nagaur in Sessions Case No.02/1986.

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Date of Judgment: 26th September, 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI

Mr.JPS Choudhary , Public Prosecutor .

Mr.Anand Purohit] for the respondents.
Mr.Pappu Sanghwa]

BY THE COURT :(PER HON.MR.BHAGWATI PRASAD,J.)-

This appeal is filed by the State of Rajasthan against the decision of Addl. Sessions Judge, Nagaur in Sessions Case No.2/1986 dated 14.12.1987.

The prosecution was initiated on the basis of a report lodged by one Jeeper Ram s/o Prabhu Ram . In the written report submitted by him, Jhhipar Ram stated that he returned from village Asop to his village Senpi at about 02.00 PM on 11.11.85. At that time mother of deceased Jhhipar Ram s/o Idan, came to him and said that today morning at about 08-09 AM accused , namely, Rupa Ram, Ghewar Ram, Ram Deo, Teja Ram, Sapuri, Situri and Sugnai armed with clubs and halbani, entered into the house of Jhhipar Ram and killed Jhhipar Ram, after dragging him out of the house. The mother of Jhhipar Ram , Idan Ram and their daughter tried to rescue. But they were also inflicted injuries.

On the basis of such report, a case was registered at Police Station Bhawanda , being FIR No. 52/1985 under sections 147, 148, 149, 452, 323, and 302 against all the accused persons. After the lodging of the first information report, investigation commenced and after conclusion of the evidence, charge sheet was filed of the accused persons. The case was committed and made over to the trial court. The trial court framed charges against all the accused persons under sections 147, 302, 302/3149, 323 and 323/149 and 450 IPC. They denied the charges and claimed trial. At the trial , prosecution examined 15 witnesses and exhibited 38 documents .

The accused was examined under section 313 Cr.P.C. and examined 4 witnesses.

The trial court, after considering the case of the prosecution, acquitted the accused respondents of the charges levelled against them. According to the trial court, PW/3 Parki, PW/5 Idan , PW/9 Kishna Ram, Police Constable, were produced as eye witnesses. The first information report was not lodged by any of these eye witnesses but was lodged by PW/ 1 Jeeper Ram.

On the fateful day, this witness had gone to Asop and returned at about 02.00 PM. At that time Idan Ram' s wife and mother of the deceased Jhhipar Ram, along with family members came to him and reported about the incident. The trial court has noted that none of the eye witnesses have taken care to lodge the report , though the incident had taken place at about 08.00 in the morning of 11.11.84 and the first informant had only come by 02.00 PM in the village on that day. The trial court has noticed that one of the alleged witnesses alleged to be PW/9 Kishna Ram, who is a police constable, has not been shown to be an eye witness in the first information report. This goes a long way, according to the trial court. Further the trial court has taken note of the situation that this witness

PW/9 Kishna Ram, is a Police Constable . The occurrence had taken place at about 8 or 9 in the morning, yet he has not bothered to have lodged the first information report forthwith. The trial court has further noticed that the first information report has been lodged by PW/1 Jeeper Ram , after receiving information from the mother of the deceased Jhhipar Ram. Yet she has not been produced. The trial court has noticed that according to the first information report, accused had 'halbani' with them. But no injury of 'halbani' has been reported by the doctor. The trial court further noticed that according to the first information report there are 3 eye witnesses,- One, mother of Jhhipar Ram, deceased, another father Idan, and sister Parki. Out of these three , mother of Jhhipar Ram has not been produced . Two witnesses, PW/3 Parki, PW/5 Idan have been produced in evidence.

According to the statement of PW/3 Parki, when the incident occurred she was cooking in the kitchen. Deceased Jhhipar Ram came to her and said that he be served food. Parki is said to have replied that after preparation of the Chapaties she will serve him. At that time, the accused are alleged to have come armed and caused injuries to the deceased. According to witness PW/ Parki, the deceased entered into the inner room, where beating was given to him and then he was dragged out. Out of the ladies, accused Sugni

caused injury to her. She in her description has not stated that any one of the accused witnesses had Halbani and she substituted 'gupti' in the hand of accused Teja Ram, who is since dead. According to this witness, she was inflicted injury by Sugni and Sapuri w/o Rupa Ram. This witness states that her mother had made her escape good from the scene of occurrence being scared. She has been confronted with her police statement. In Ex.P/3 she has stated that while she was cooking chapaties Jhhipar Ram was sleeping. In the police statement this witness has not stated that she was cooking in the kitchen. She has not been able to name the assailants of her brother because she took shelter on the plea that she was sitting in kitchen. The trial court has noticed that while Jhhipar Ram was being beaten, his father and sister had not intervened, is an improbability .

This witness has further stated that she has not seen any accused causing injury to the deceased inside the room. It was only after he was brought out of the room that she could notice the beating. The trial court noticed that his witness is deposing things in a fashion which raises doubt. She has said that injuries were inflicted by 'gupti' but PW/8 Dr. Mohd.Ibrahim did not support her version. In her police statement she has not stated that Teja Ram and Ram Deo inflicted injuries outside the Sal. She denies knowledge about

presence of PW/9 Kishna Ram. She also states that she has no knowledge of the fact that Kishna Ram had come to serve process on his brother in relation to a dacoity case. The trial court has noticed that PW/3 Parki and PW/5 Idan does not support the version of PW/9 Kishna Ram and PW/9 Kishna Ram does not support the presence of these two witnesses.

Then the trial court has discussed the testimony of PW/5 Idan. This witness has stated that Teja Ram caused 2 'gupti' injuries to the deceased by the point of 'gupti'. But there was no punctured wound according to the medical evidence. PW/5 Idan Ram has stated that he has no knowledge as to where his wife was and then goes on to add that his wife was a blind lady. This witness has denied knowledge about the conduct of the deceased Jhhipar Ram against whom various criminal cases are pending. This witness denies to have stated in his police statement Ex.D/2 that he cannot see properly because he has a weak eye sight. He also denies to have stated in his police statement that he identified the accused by voice. The trial court has noticed that this witness has improved upon the police statement substantially. The trial court has also noticed that no independent witness has been produced.

The trial court has also examined the testimony of PW/9 Kishna Ram critically and has observed that he was a police constable ,who was present at the time of commission of crime i.e. at about 08-09 AM and he does not lodge the first information report. This witness does not support the presence of PW/3 Parki or PW/5 Idan Ram. Thus, presence of these witnesses also becomes doubtful. The trial court has noticed that when a serious offence like murder is committed in the presence of police constable ,then not reporting the incident to police forthwith is a doubtful consequence. He has not supported the presence of two other witnesses. Therefore, his testimony also becomes subject to doubt.

The trial court has noticed that the accused have also sustained injuries and the prosecution have not explained those injuries and this is explained by the fact that PW/9 Kishna Ram was not mentioned in the first information report as an eye witness. Further this witness in his statement has stated that all the accused persons came separately and not in a group, which is the case not set up by the other eye witnesses. PW/1 Jeeper Ram, the first informant, has said that he had been narrated the incident by the mother of Jhhipar Ram and that being the position , the trial court

has expressed that there were two mothers of Jhhipar Ram as Idan Ram had 2 wives, which one of them had come to inform him, is not clear. The trial court has also noticed that there was no corroborative piece of evidence available on record and thus the trial court acquitted the accused.

The learned counsel for the State, expressing its concern about the treatment given to the eye witnesses by the trial court, said that there were two injured eye witnesses and the learned trial court has conveniently brushed aside their testimony on the ground of contradiction from their police statement. PW/3 Parki and PW/5 Idan Ram, both the witnesses are injured eye witnesses. They were the inmates of the house, being father and sister of the deceased and their presence therefore was natural. In that view of the matter, the treatment given by the trial court to the witnesses ,cannot be considered to be a juristic approach. The police constable, if has not supported the presence of these witnesses, then his presence can be considered to be doubtful and not of these witnesses. That witness has not been named in the first information report, therefore, his presence cannot be considered to be natural. But so far as these two witnesses are concerned, they are the father , and sister of the deceased. The learned counsel urged that the order of acquittal

deserves to be set aside in that background.

Per contra, the learned counsel for the defendant accused, stated that it is a case where no corroborative statement is available on record, based on the testimony of 3 eye witnesses. PW/3 Parki and PW/5 Idan have prevaricated so ostensibly in their statement in court that they stand discredited. When they spoke of such stands which were not probable, then it would not be open to the court to have believed their testimony. More particularly, in the circumstances where their testimony was half truthful and there was no corroboration available on record. The witness PW/9 Kishna Ram could not have been treated as an eye witness because he in his statement has not supported the presence of PW/3 Parki and PW/5 Idan. Further his name was not mentioned in the first information report and in that background, he could not have been treated as an eye witness ,and if the testimony of these witnesses is taken out, there remains nothing in the prosecution.

We have heard the learned counsel for the parties and have given our thoughtful consideration to the material available on record.

The first and the foremost question in this appeal, which goes to the root of the case, is that the incident had taken place at about 08.00 or 09.00 in the morning. If any one of the eye witnesses , as produced by the prosecution, was on the scene of occurrence, then there is no reason why they should have waited for PW/1 Jeeper Ram to arrive and then go to the police station to lodge the report. This delay becomes more pronounced and favourable to the defence in the background that one of these witnesses PW/9 Kishna Ram is a police constable. He was under statutory obligation to have immediately gone to the police station to report and having not done so, he has derelicted his duty. Apart from this dereliction, it can be seen that if he was present , he would have mentioned about the presence of the other two witnesses, which he has not done, and, therefore, his presence stands entirely negated.

The presence of the police constable , when negated, presence of the family members also stands negated, because they would not have waited for PW/1 Jeeper Ram to arrive to file the FIR. The incident has happened at about 08.00 AM and the family members do not immediately inform police and wait for the witnesses to come. This shows an improbable conduct. During this

period they have contacted none, therefore their presence also stands negated.

PW/3 Parki and PW/5 Idan has sustained certain injuries. So the accused Ram dev and Rupa Ram regarding which defence has suggested that there was an incident which had taken place on the previous day, wherein two eye witnesses , along with the deceased, made an assault on the accused. Therefore, the injuries have been sustained by both the parties. Thus, the injuries present on the person of the accused and the deceased are not the injuries sustained in the incident where Jhhipar Ram was killed. Since there was no corroboration available , the witnesses are self condemned. As the settled law in the country is that eye witnesses who are partly reliable, they are required to be corroborated by independent source. There was no independent source available, to corroborate the witnesses and in this background when the trial court has acquitted the accused person , we do not feel that such acquittal is liable to be disturbed. The findings cannot be said to be perverse or against law.

In that view of the matter, we are not prepared to unsettle the findings of the trial court in acquitting the accused appellants. Accordingly the appeal being merit less, fails. The

accused are on bail, they need not surrender. The bails bonds are cancelled.

(MUNISHWAR NATH BHANDARI), J. **(BHAGWATI PRASAD), J.**

L.George